IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF JUNE
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE SRI JUSTICE BILAL NAZKI
and
THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.87 of 2007

Between:

**M/s.Velivennu Primary Agricultural Co-op.
Credit Society Ltd., Velivennu (Post),
Undrajavaram Mandal,
West Godavari District.**

..... PETITIONER

and

**The Commercial Tax Officer No.II,
Tanuku, West Godavari District.**

.....RESPONDENT

The Hon'ble Sri Justice Bilal Nazki
and
The Hon'ble Sri Justice S.Ananda Reddy

Writ Petition No.87 of 2007

Order: *(per the Hon'ble Sri Justice Bilal Nazki)*

Heard the learned Counsel for the parties. With their consent, the Writ Petition itself is disposed of although the Vacate Stay Petition has been listed.

The controversy in this case has a long history, but presently we are concerned with an assessment order passed by the respondent-assessing authority on 16-11-2006.

The petitioner is dealing with a product named as Sodium Hydro Sulphite, which is used in enhancing the quality of the jaggery. The question before this Court is whether Sodium Hydro Sulphite is a chemical or not.

Prior to the issuance of G.O.Ms.No.189 Revenue (CT.II) Department, dated 07-02-2005, Sodium Hydro Sulphite was being taxed @ 12% in terms of VII Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as 'the Act'), treating it as a general good. It was taxed @ 10% up to 31st December, 1999 and thereafter @ 12% with effect from 01-01-2000.

Earlier, there was controversy between the parties as to whether Sodium Hydro Sulphite was a 'Chemical or Dye' in terms of Entry 9 of VI Schedule to the Act. The Tribunal held that the commodity did not fall under Entry 9 of VI Schedule to the Act and that it was covered by VII Schedule and was taxable under the category of general goods. But later on, G.O.Ms.No.189 dated 07-02-2005 was passed laying down that retrospectively all chemicals would attract tax @ 8% upto 30th September, 2004. For earlier years, the petitioner had been charged tax at a rate higher than 8%.

After some litigation even in this Court, the revisional authority agreed with the petitioner that by virtue of G.O.Ms.No.189 dated 07-02-2005, tax on Sodium Hydro Sulphite was to be assessed @ 8%. But in the present case, although the said GO was brought to the notice of the respondent-assessing authority, he chose to follow the earlier judgment of the Tribunal without mentioning in his order as to why the said GO was not being implemented. Admittedly, the Tribunal had passed its order much before the issuance of G.O.Ms.No.189 dated 07-02-2005. G.O.Ms.No.189 reads as under:

> 'In exercise of the powers conferred by Sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Act No.VI of 1957), and in partial modification of the orders issued in G.O.Ms.No.1021, Revenue Dt.13.12.2004, the Governor of Andhra Pradesh hereby directs that the rate of tax on the sale of 'All Chemicals' besides 'Calcium Carbide', which are not covered under Entry (9) of Dyes and Chemicals, in the state, shall be at eight paise in the rupee, upto 30.09.2004 only, under the said Act.'

From bare perusal of this notification, it becomes clear that all chemicals besides Calcium Carbide and chemicals, which are not covered under Entry 9 of VI Schedule to the Act, would be covered by this notification.

There is already a finding of the Tribunal that Sodium Hydro Sulphite is not covered under Entry 9 of VI Schedule to the Act.

The learned Counsel for the respondent, however, wants this Court to come to a conclusion that Sodium Hydro Sulphite was not a chemical.

There is no basis for such an argument.

It is contended by the learned Counsel for the respondent that even common salt, which is chemically known as Sodium chloride could be treated as a chemical, if Sodium Hydro Sulphite is treated as a chemical.

That is true. If there was no separate entry for common salt in the schedules of the APGST Act, common salt would also be treated as a chemical, because in our view, Sodium Chloride and Sodium Hydro Sulphite are chemicals.

For these reasons, the Writ Petition is allowed, the assessment order dated 16-11-2006 is hereby set aside and it is held that by virtue of G.O.Ms.No.189, dated 07-02-2005, Sodium Hydro Sulphite attracts tax @ 8% for the assessment year in question. No costs.

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(Bilal Nazki, J)

7th June, 2007

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(S.Ananda Reddy, J)

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